

<p>RS MEDICAL, Petitioner</p> <p>V.</p> <p>THE UNIVERSITY OF TEXAS SYSTEM, Respondent</p>	<p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p>	<p>BEFORE THE STATE OFFICE</p> <p>OF</p> <p>ADMINISTRATIVE HEARINGS</p>
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DECISION AND ORDER

RS Medical challenges the decision of the University of Texas System (UTS) denying preauthorization for an RS-4i interferential and muscle stimulator (RS-4i) for an injured worker, Claimant _____. Finding that RS Medical did not meet its burden of showing that the requested equipment is reasonable and necessary medical care and should be preauthorized, the Administrative Law Judge (ALJ) denies preauthorization.

The hearing was held on February 4 and 18, 2004, before ALJ Katherine Smith. RS Medical appeared and was represented by Patrick K. Cougill, who is an attorney employed by RS Medical. UTS appeared and was represented by Assistant Attorney General Christopher Coppola.

I. DISCUSSION

1. Background Facts

Claimant sustained a right sacroiliac strain/sprain and hip contusion on _____. After her injury, Claimant underwent extensive treatment including epidural injections, facet injections, work conditioning, and chronic pain management, but her pain continued. In September 2002, Claimant’s treating doctor, Aaron Calodney, M.D., prescribed an RS-4i for two months. After Claimant reported in December 2002 that the RS-4i was helpful, Dr. Calodney prescribed the RS-4i for indefinite use, which UTS denied as not medically necessary. The dispute was referred to an Independent Review Organization (IRO), which agreed with UTS. RS Medical appealed the IRO decision to the State Office of Administrative Hearings.

2. Applicable Law

Under the Texas Workers’ Compensation Act (the Act), an employee who sustains a compensable injury is entitled to all health care that cures or relieves the effects naturally resulting from the compensable injury, promotes recovery, or enhances the ability of the employee to return to or retain employment. TEX. LAB. CODE ANN. § 408.021(a). Under § 401.011(19) of the Act, health care includes all reasonable and necessary medical aid, medical examinations, medical treatment, medical diagnoses, medical evaluations, and medical services. Certain categories of health care identified by the Commission require preauthorization, which is dependent upon a prospective showing of medical necessity under § 413.014 of the Act and 28 TEX. ADMIN. CODE (TAC) § 134.600. Preauthorization is required for the RS-4i under 28 TAC § 134.600(h)(11).

3. Analysis

Mark D. Barhorst, M.D., testified on behalf of RS Medical that although he did not treat Claimant, he prescribes the RS-4i for his patients because it effectively controls muscle spasms and documents a patient's usage with a memory chip. He recommends that patients use the RS-4i two times a day on an ongoing basis with other treatments.

Melissa Tonn, M.D., testified on behalf of UTS that stimulators are not appropriate for chronic pain. She testified further that the RS-4i was not medically necessary to treat Claimant because Claimant failed to show improvement with its use.

The ALJ finds that the evidence does not support the medical necessity of the RS-4i for the treatment of Claimant's compensable injury because Claimant showed no improvement and no reduction in pain medication with its use. Although RS Medical argues that Dr. Calodney did not prescribe the RS-4i to reduce Claimant's reliance on drugs but to reduce muscle spasms and pain, Claimant's September 13, 2002, medical record indicates that Dr. Calodney hoped that the RS-4i would gradually decrease her overall pain medication use and increase her activity level. Petitioner's Ex. 7-11; State's Ex. 6. The only evidence that exists that the RS-4i was relieving Claimant's pain is her statement to Dr. Calodney that it was helpful, but that statement is suspect because she also told him that she was using it every day, which is not supported in the record. *See* Pet. Exs. 2-6 and 9. Furthermore, there is no evidence that she used the device from December 2002 to June 2003. Pet. Ex. 9. Although Claimant's condition apparently improved in April 2003, there is no indication that her improvement was due to the RS-4i. State's Ex. 8. And were Claimant needing the RS-4i only periodically to deal with sporadic muscle spasms, a use that Dr. Barhorst suggested was permissible, that usage did not relieve her pain or improve her activity level. According to Dr. Tonn, Claimant's pain and drug usage were the same, if not greater, after she began using the device. For example, on March 24, 2003, Kenneth D. Cushman, M.D. reported that Claimant continued to have chronic pain syndrome, was limited in her activities, and continued to need pain medication. In addition, Dr. Tonn testified that in September 2003 Claimant was taking three hydrocodone a day and experiencing pain at the level of 9 or 10 out of 10.

Because Claimant's compensable injury did not improve with the use of the RS-4i, the RS-4i should not be preauthorized.

II. FINDINGS OF FACT

1. _____. (Claimant) sustained a compensable injury on _____.
2. Claimant's treating physician, Aaron Calodney, M.D., prescribed an RS-4i interferential and muscle stimulator (RS-4i) for Claimant in September 2002.
3. Dr. Calodney prescribed continued indefinite use of the RS-4i in December 2002 and sought preauthorization from the University of Texas System (UTS), Claimant's employer, which is self-insured.
4. UTS denied the preauthorization.

5. RS Medical sought medical dispute resolution with the Texas Workers' Compensation Commission's Medical Review Division, which referred this matter to an Independent Review Organization (IRO). The IRO report concurred with UTS and denied preauthorization.
6. RS Medical timely requested a hearing before the State Office of Administrative Hearings (SOAH).
7. Notice of the hearing in this case was mailed to the parties on August 15, 2003. The notice contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
8. Claimant has used the RS-4i sporadically since September 2002.
9. Claimant has been taking pain medications continuously since her injury.
10. Use of the RS-4i did not decrease Claimant's pain level and her overall pain medication use and did not increase her activity level.

III. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Section 413.031 of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (the Act).
2. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to § 413.031(k) of the Act and TEX. GOV'T CODE ANN. ch. 2003.
3. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
4. RS Medical, as Petitioner, had the burden of proof on appeal by a preponderance of the evidence under § 413.031 of the Act, and 28 TEX. ADMIN. CODE §148.21(h).
5. RS Medical failed to show the RS-4i will cure or relieve the effects of Claimant's compensable injury under § 408.021(a) of the Act.
6. The requested RS-4i is not medically necessary for treating Claimant's compensable injury.

ORDER

IT IS, THEREFORE, ORDERED that preauthorization for the RS-4i is denied.

SIGNED April 1, 2004.

**KATHERINE L. SMITH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**